

Exceptions to the General Prohibition

The government code and case law provide a series of exceptions to the 1090 rule. However, before we reach what are considered “exceptions” to this rule, it is notable that the statutory scheme explicitly recognizes that certain interests are not interests under 1090 at all:

- Corporate ownership of less than three percent and total annual income from dividends and stock dividends amounting to less than five percent of the official’s income (*so long as* any other income received from the corporation also amounts to less than five percent).
- Reimbursement of expenses for actual and necessary expenses incurred in the performance of official duties.
- The receipt of public services provided by his or her agency or board *as long as* he or she receives them in the same manner as if he or she were not a public official.
- Public officials, who are landlords or tenants of the local, state, or federal government, or any arm thereof, would not have an interest in a contract *unless* the subject matter of the contract is the land for which he or she is either the landlord or tenant.
- A tenant in public housing created pursuant to the provisions of the Health and Safety Code, would not have an interest in agreements regarding that housing if he or she is serving as a member of the board of commissioners overseeing it.
- No interest exists when both spouses in a family are public officials. One spouse has no recognizable interest under 1090 in the other’s office holding *if* it has existed for at least one year prior to his or her election or appointment to office.
- Unsalaries members of nonprofit corporations do not have an interest in contracts with the nonprofit *so long as* the official’s interest is disclosed to the body or board at the time the contract is first considered *and* is noted in its official records. The Attorney General’s office construes “members” to refer only to persons who constitute the membership of an organization and not to persons who serve as members of the board of directors. For the exception to apply, the person, who is a member of the organization, may not simultaneously hold a salaried position with the organization.
- Acting as a noncompensated officer of a nonprofit, tax exempt corporation which, as a primary purpose, supports the functions of a public body or board, or to which the public body has a legal obligation to give particular consideration. Such interest, if any, must be noted in the official records of the public body.
- Salary, per diem, or reimbursement for expenses from a governmental entity, *provided*: (1) that the interest is disclosed to the body or board at the time of consideration of the contract, and (2) the interest is noted in its official record. However, this exception does

not apply if the contract directly involves the department of the governmental entity that employs the officer or employee.

- The exception may apply to an attorney of a contracting party or an owner, officer, employee, or agent of a firm which renders or has rendered service to the contracting party in the capacity of stockbroker, insurance agent/broker, or real estate agent/broker so long as: (1) these individuals may not receive any remuneration, consideration, or a commission as a result of the contract, and (2) they must have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
- An official who also is an officer or employee, or who owns less than 10 percent of a bank or savings and loan, does not have an interest in the contracts of parties who are depositors or borrowers at the official's institution.
- A bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation.

Remote Interests of Members of Boards and Commissions

If a public official who is a member of a public board or commission has only a "remote interest," the board or agency may take action on the sale, purchase, or other contract *so long as* the official with the financial interest does not participate in the decision. An official with a remote interest is still required to (1) disclose the interest to his or her agency, board, or body and (2) have it noted in the official records of that body.¹ A remote interest exists in the following situations:

- An officer or employee of a nonprofit corporation.
- An employee or agent of a private contracting party *so long as* the private party has 10 or more additional employees, *and* the official/employee (1) has been employed by that party for at least three years, (2) owns less than 3 percent of the shares of stock of the contracting party, (3) is not an officer or director of the contracting party, *and* the official did not directly participate in formulating the bid of the contracting party.

¹ An official who intentionally fails to disclose the existence of a remote interest before action is taken on the contract in question would violate section 1090. However, such a violation would not void the contract unless the private contracting party knew of the official's remote interest at the time of contracting.

- An employee or agent of a private contracting party *so long as*: (1) the official is an officer in the local agency located in a county with a population of 400,000 or less, (2) the contract is competitively bid and the contracting party is the lowest bidder, (3) the contracting party has at least 10 additional employees, (4) the official does not hold a primary management position with the contracting party, is not an officer or director of the contracting party, nor does the official hold any ownership interest in the contracting party, and (5) the official may not have directly participated in formulating the bid of the contracting party.
- A parent has only a remote interest in the earnings of his or her minor child for personal services.
- A landlord or tenant of a contracting party has a remote interest in the contracts of that party.
- Attorney, stockbroker, insurance or real estate broker/Agent so long as these individuals (1) do not receive any remuneration, consideration, or a commission as a result of the contract, and (2) they do not have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
- A special designation of remote interest is given to any member of a nonprofit corporation formed under either the Agricultural Code or Corporations Code for the sole purpose of selling agricultural products or supplying water.
- An official has only a remote interest in a party that seeks to contract with the official's governmental agency when the official has been a supplier of goods or services to the contracting party for at least five years prior to the official's election or appointment to office.
- An official who enters into a contract or agreement under the California Land Conservation Act of 1965 (The Williamson Act) is deemed to have only a remote interest in that contract for the purposes of section 1090.
- An official who is a director, or holds a 10-percent interest or greater in a bank or savings and loan has only a remote interest in the contracts of parties who are depositors or borrowers at the official's institution.
- An engineer, geologist, or architect has a remote interest in a consulting, engineering, or architectural firm if he or she does not serve as an officer, director, or in a primary management capacity.
- An elected officer has a remote interest in a housing assistance contract, which is entered into pursuant to section 8 of the United States Housing Act of 1937, *provided* that the officer was elected after November 1, 1986, *and* the contract was in existence prior to the officer's assumption of office. The exemption for housing assistance contracts extends only to the renewal or extension of an existing tenant's contract or to new tenants, where

the unit was previously under a housing assistance contract and the rental vacancy rate for the jurisdiction is less than five percent.

Special Statutes and Exemptions

Some statutes contain specific provisions which alter or eliminate the general rule of section 1090 in specific situations. Generally, where a more specific rule exists in an act under which a particular commission has been formed, it controls over more general statutes such as 1090 or common law. Such specific statutes exist in the Education Code, Health and Safety Code, and in redevelopment law.

- In addition, section 1091.1 provides a special exemption for public officials who must deal with state and local governmental entities regarding subdivision of land which they own. This section allows the official to apply to subdivide lands which he or she owns, or has an interest in, without violating section 1090. He or she must, however, fully disclose the nature of his or her interest in such lands to the body which has jurisdiction over his or her subdivision and abstain from voting on any matter concerning it.
- Section 1091.2 exempts any contract or grant made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 *unless*: (1) the contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents, or financially benefits the member or the entity he or she represents, *and* (2) the member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.
- Section 1091.3 exempts any contract or grant made by a county children and families commission created pursuant to the California Children and Families Act of 1998 of the Health and Safety Code, *unless*: (1) the contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents, or financially benefits the member or the entity he or she represents, *and* (2) the member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.
- Finally, the courts have recognized a limited rule of necessity. Of course, when the rule of necessity is applied to a member of a multimember board, as opposed to a single official or employee, that board member must abstain from any participation in the decision.